

the Secretary no later than 30 days following payment of a default claim to the lender;

(10) The loan was legally enforceable by the lender when the agency paid a claim on the loan to the lender;

(11) The agency exercised due diligence in collection of the loan in accordance with § 682.410(b)(6);

(12) The agency and lender, if applicable, complied with all other Federal requirements with respect to the loan including—

(i) Payment of origination fees;

(ii) For Consolidation loans disbursed on or after October 1, 1993, and prior to October 1, 1998, payment on a monthly basis, of an interest payment rebate fee calculated on an annual basis and equal to 1.05 percent of the unpaid principal and accrued interest on the loan;

(iii) For Consolidation loans for which the application was received by the lender on or after October 1, 1998 and prior to February 1, 1999, payment on a monthly basis, of an interest payment rebate fee calculated on an annual basis and equal to 0.62 percent of the unpaid principal and accrued interest on the loan;

(iv) For Consolidation loans disbursed on or after February 1, 1999, payment of an interest payment rebate fee in accordance with paragraph (a)(12)(ii) of this section; and

(v) Compliance with all default aversion assistance requirements in § 682.404(a)(2)(ii).

(13) The agency assigns the loan to the Secretary, if so directed, in accordance with the requirements of § 682.409; and

(14) The guaranty agency certifies to the Secretary that diligent attempts have been made by the lender and the guaranty agency under § 682.411(h) to locate the borrower through the use of effective skip-tracing techniques, including contact with the schools the student attended.

(b) Notwithstanding paragraph (a) of this section, the Secretary may waive his right to refuse to make or require repayment of a reinsurance payment if, in the Secretary's judgment, the best interests of the United States so require. The Secretary's waiver policy for violations of paragraph (a)(3) or

(a)(5) of this section is set forth in appendix D to this part.

(c) In evaluating a claim for insurance or reinsurance, the issue of confirmation of subsequent loans under an MPN will not be reviewed and a claim will not be denied based on the absence of any evidence relating to confirmation in a particular loan file. However, if a court rules that a loan is unenforceable solely because of the lack of evidence of a confirmation process or processes, insurance and reinsurance benefits must be repaid.

(d) A guaranty agency may not make a claim payment from the Federal Fund or receive a reinsurance payment on a loan if the agency determines or is notified by the Secretary that the lender offered or provided an improper inducement as described in paragraph (5)(i) of the definition of lender in § 682.200(b).

(Approved by the Office of Management and Budget under control number 1845–0020)

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082)

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§ 682.407 Discharge of student loan indebtedness for survivors of victims of the September 11, 2001, attacks.

(a) *Definition of terms.* As used in this section—

(1) *Eligible public servant* means an individual who—

(i) Served as a police officer, firefighter, other safety or rescue personnel, or as a member of the Armed Forces; and

(ii)(A) Died due to injuries suffered in the terrorist attacks on September 11, 2001; or

(B) Became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(2) *Eligible victim* means an individual who died due to injuries suffered in the terrorist attacks on September 11, 2001 or became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(3) *Eligible parent* means the parent of an eligible victim if—

(i) The parent owes a FFEL PLUS Loan incurred on behalf of an eligible victim; or

(ii) The parent owes a FFEL Consolidation Loan that was used to repay a FFEL or Direct Loan PLUS Loan incurred on behalf of an eligible victim.

(4) *Died due to injuries suffered in the terrorist attacks on September 11, 2001* means the individual was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of or in the immediate aftermath of the terrorist-related aircraft crashes on September 11, 2001, and the individual died as a direct result of these crashes.

(5) *Became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001* means the individual was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of or in the immediate aftermath of the terrorist-related aircraft crashes on September 11, 2001 and the individual became permanently and totally disabled as a direct result of these crashes.

(i) An individual is considered permanently and totally disabled if—

(A) The disability is the result of a physical injury to the individual that was treated by a medical professional within 72 hours of the injury having been sustained or within 72 hours of the rescue;

(B) The physical injury that caused the disability is verified by contemporaneous medical records created by or at the direction of the medical professional who provided the medical care; and

(C) The individual is unable to work and earn money due to the disability and the disability is expected to continue indefinitely or result in death.

(ii) If the injuries suffered due to the terrorist-related aircraft crashes did not make the individual permanently and totally disabled at the time of or in the immediate aftermath of the attacks, the individual may be considered to be permanently and totally disabled for purposes of this section if the

individual's medical condition has deteriorated to the extent that the individual is permanently and totally disabled.

(6) *Immediate aftermath* means, except in the case of an eligible public servant, the period of time from the aircraft crashes until 12 hours after the crashes. With respect to eligible public servants, the immediate aftermath includes the period of time from the aircraft crashes until 96 hours after the crashes.

(7) *Present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site* means physically present at the time of the terrorist-related aircraft crashes or in the immediate aftermath—

(i) In the buildings portions of the buildings that were destroyed as a result of the terrorist-related aircraft crashes;

(ii) In any area contiguous to the crash site that was sufficiently close to the site that there was a demonstrable risk of physical harm resulting from the impact of the aircraft or any subsequent fire, explosions, or building collapses. Generally, this includes the immediate area in which the impact occurred, fire occurred, portions of buildings fell, or debris fell upon and injured persons; or

(iii) On board American Airlines flights 11 or 77 or United Airlines flights 93 or 175 on September 11, 2001.

(b) *September 11 survivors discharge.* (1) The obligation of a borrower and any endorser to make any further payments on an eligible FFEL Program Loan is discharged if the borrower was, at the time of the terrorist attacks on September 11, 2001, and currently is, the spouse of an eligible public servant, unless the eligible public servant has died. If the eligible public servant has died, the borrower must have been the spouse of the eligible public servant at the time of the terrorist attacks on September 11, 2001 and until the date the eligible public servant died.

(2) The obligation of a borrower to make any further payments towards the portion of a joint FFEL Consolidation Loan incurred on behalf of an eligible victim is discharged if the borrower was, at the time of the terrorist

attacks on September 11, 2001, and currently is, the spouse of an eligible victim, unless the eligible victim has died. If the eligible victim has died, the borrower must have been the spouse of the eligible victim at the time of the terrorist attacks on September 11, 2001 and until the date the eligible victim died.

(3) If the borrower is an eligible parent—

(i) The obligation of a borrower and any endorser to make any further payments on a FFEL PLUS Loan incurred on behalf of an eligible victim is discharged.

(ii) The obligation of the borrower to make any further payments towards the portion of a FFEL Consolidation Loan that repaid a FFEL or Direct Loan PLUS Loan incurred on behalf of an eligible victim is discharged.

(4) The parent of an eligible public servant may qualify for a discharge of a FFEL PLUS loan incurred on behalf of the eligible public servant, or the portion of a FFEL Consolidation Loan that repaid a FFEL or Direct PLUS Loan incurred on behalf of the eligible public servant, under the procedures, eligibility criteria, and documentation requirements described in this section for an eligible parent applying for a discharge of a loan incurred on behalf of an eligible victim.

(c) *Applying for discharge.* (1) In accordance with the procedures in paragraphs (c)(2) through (c)(13) of this section, a discharge may be granted on—

(i) A FFEL Program Loan owed by the spouse of an eligible public servant;

(ii) A FFEL PLUS Loan incurred on behalf of an eligible victim;

(iii) The portion of a FFEL Consolidation Loan that repaid a PLUS loan incurred on behalf of an eligible victim; and

(iv) The portion of a joint Consolidation Loan incurred on behalf of an eligible victim.

(2) After being notified by the borrower that the borrower claims to qualify for a discharge under this section, the lender shall suspend collection activity on the borrower's eligible FFEL Program Loan and promptly request that the borrower submit a request for discharge on a form approved by the Secretary.

(3) If the lender determines that the borrower does not qualify for a discharge under this section, or the lender does not receive the completed discharge request form from the borrower within 60 days of the borrower notifying the lender that the borrower claims to qualify for a discharge, the lender shall resume collection and shall be deemed to have exercised forbearance of payment of both principal and interest from the date the lender was notified by the borrower. The lender must notify the borrower that the application for the discharge has been denied, provide the basis for the denial, and inform the borrower that the lender will resume collection on the loan. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during this period.

(4) If the lender determines that the borrower qualifies for a discharge under this section, the lender shall provide the guaranty agency with the following documentation—

(i) The loan application, if a separate loan application was provided to the lender; and

(ii) The completed discharge form, and all accompanying documentation supporting the discharge request that formed the basis for the determination that the borrower qualifies for a discharge.

(5) The lender must file a discharge claim within 60 days of the date on which the lender determines that the borrower qualifies for a discharge.

(6) The guaranty agency must review a discharge claim under this section promptly.

(7) If the guaranty agency determines that the borrower does not qualify for a discharge under this section, the guaranty agency must return the claim to the lender with an explanation of the basis for the agency's denial of the claim. Upon receipt of the returned claim, the lender must notify the borrower that the application for the discharge has been denied, provide the basis for the denial, and inform the borrower that the lender will resume collection on the loan. The lender is deemed to have exercised forbearance of both principal and interest from the date collection activity was suspended until the next payment due date. The

lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during this period.

(8) If the guaranty agency determines that the borrower qualifies for a discharge, the guaranty agency pays the lender on an approved claim the amount of loss required under paragraph (c)(9) of this section. The guaranty agency shall pay the claim not later than 90 days after the claim was filed by the lender.

(9) The amount of loss payable on a discharge claim is—

(i) An amount equal to the sum of the remaining principal balance and interest accrued on the loan, unpaid collection costs incurred by the lender and applied to the borrower's account within 30 days of the date those costs were actually incurred, and unpaid interest up to the date the lender should have filed the claim; or

(ii) In the case of a partial discharge of a Consolidation Loan, the amount specified in paragraph (c)(9)(i) of this section for the portion of the Consolidation Loan incurred on behalf of the eligible victim.

(10) The amount payable on an approved claim includes the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed 60 days from the date the lender determines that the borrower qualifies for a discharge under this section.

(ii) During a period not to exceed 30 days following the date the lender receives a claim returned by the guaranty agency for additional documentation necessary for the claim to be approved by the guaranty agency.

(iii) During the period required by the guaranty agency to approve the claim and to authorize payment or to return the claim to the lender for additional documentation, not to exceed 90 days.

(11) After being notified that the guaranty agency has paid a discharge claim, the lender shall notify the borrower that the loan has been discharged or, in the case of a partial discharge of a Consolidation Loan, partially discharged. Except in the case of a partial discharge of a Consolidation Loan, the lender shall return to the

sender any payments received by the lender after the date the guaranty agency paid the discharge claim.

(12) The Secretary reimburses the guaranty agency for a discharge claim paid to the lender under this section after the agency pays the lender. Any failure by the lender to satisfy due diligence requirements prior to the filing of the claim that would have resulted in the loss of reinsurance on the loan in the event of default are waived by the Secretary, provided the loan was held by an eligible loan holder at all times.

(13) Except in the case of a partial discharge of a Consolidation Loan, the guaranty agency shall promptly return to the sender any payment on a discharged loan made by the sender and received after the Secretary pays a discharge claim. At the same time that the agency returns the payment it shall notify the borrower that the loan has been discharged and that there is no further obligation to repay the loan.

(14) A FFEL Program Loan owed by an eligible public servant or an eligible victim may be discharged under the procedures in § 682.402 for a discharge based on the death or total and permanent disability of the eligible public servant or eligible victim.

(d) *Documentation that an eligible public servant or eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001.* (1) Documentation that an eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) A certification from an authorized official that the individual was a member of the Armed Forces, or was employed as a police officer, firefighter, or other safety or rescue personnel, and was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes; and

(ii) The inclusion of the individual on an official list of the individuals who died in the terrorist attacks on September 11, 2001.

(2) If the individual is not included on an official list of the individuals who

died in the terrorist attacks on September 11, 2001, the borrower must provide—

- (i) The certification described in paragraph (d)(1)(i) of this section;
- (ii) An original or certified copy of the individual's death certificate; and
- (iii) A certification from a physician or a medical examiner that the individual died due to injuries suffered in the terrorist attacks on September 11, 2001.

(3) If the individual owed a FFEL Program Loan, a Direct Loan, or a Perkins Loan at the time of the terrorist attacks, documentation that the individual's loans were discharged by the lender, the Secretary, or the institution due to death may be substituted for the original or certified copy of a death certificate.

(4) Documentation that an eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001 is the inclusion of the individual on an official list of the individuals who died in the terrorist attacks on September 11, 2001.

(5) If the eligible victim is not included on an official list of the individuals who died in the terrorist attacks on September 11, 2001, the borrower must provide—

- (i) The documentation described in paragraphs (d)(2)(ii) or (d)(3), and (d)(2)(iii) of this section; and
- (ii) A certification signed by the borrower that the eligible victim was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes.

(6) If the borrower is the spouse of an eligible public servant, and has been granted a discharge on a Perkins Loan, a Direct Loan, or a FFEL Program Loan held by another FFEL lender because the eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraphs (d)(1) through (d)(3) of this section.

(7) If the borrower is the spouse or parent of an eligible victim, and has

been granted a discharge on a Direct Loan or on a FFEL Program Loan held by another FFEL lender because the eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraphs (d)(4) and (d)(5) of this section.

(8) Under exceptional circumstances and on a case-by-case basis, the determination that an eligible public servant or an eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001 may be based on other reliable documentation approved by the chief executive officer of the guaranty agency.

(e) *Documentation that an eligible public servant or eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.* (1) Documentation that an eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) A certification from an authorized official that the individual was a member of the Armed Forces or was employed as a police officer, firefighter or other safety or rescue personnel, and was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes;

(ii) Copies of contemporaneous medical records created by or at the direction of a medical professional who provided medical care to the individual within 24 hours of the injury having been sustained or within 24 hours of the rescue; and

(iii) A certification by a physician, who is a doctor of medicine or osteopathy and legally authorized to practice in a state, that the individual became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(2) Documentation that an eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) The documentation described in paragraphs (e)(1)(ii) and (e)(1)(iii) of this section; and

(ii) A certification signed by the borrower that the eligible victim was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes.

(3) If the borrower is the spouse of an eligible public servant, and has been granted a discharge on a Perkins Loan, a Direct Loan, or a FFEL Program Loan held by another FFEL lender because the eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraph (e)(1) of this section.

(4) If the borrower is the spouse or parent of an eligible victim, and has been granted a discharge on a Direct Loan or on a FFEL Program Loan held by another FFEL lender because the eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraph (e)(2) of this section.

(f) *Additional information.* (1) A lender or guaranty agency may require the borrower to submit additional information that the lender or guaranty agency deems necessary to determine the borrower's eligibility for a discharge under this section.

(2) To establish that the eligible public servant or eligible victim was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site, such additional information may include but is not limited to—

- (i) Records of employment;
- (ii) Contemporaneous records of a federal, state, city, or local government agency;
- (iii) An affidavit or declaration of the eligible public servant's or eligible victim's employer; and

(iv) A sworn statement (or an unsworn statement complying with 28 U.S.C. 1746) regarding the presence of the eligible public servant or eligible victim at the site.

(3) To establish that the disability of the eligible public servant or eligible victim is due to injuries suffered in the terrorist attacks on September 11, 2001, such additional information may include but is not limited to—

- (i) Contemporaneous medical records of hospitals, clinics, physicians, or other licensed medical personnel;
- (ii) Registries maintained by federal, state, or local governments; or
- (iii) Records of all continuing medical treatment.

(4) To establish the borrower's relationship to the eligible public servant or eligible victim, such additional information may include but is not limited to—

- (i) Copies of relevant legal records including court orders, letters of testamentary or similar documentation;
- (ii) Copies of wills, trusts, or other testamentary documents; or
- (iii) Copies of approved joint Consolidation Loan applications or approved FFEL or Direct Loan PLUS loan applications.

(g) *Limitations on discharge.* (1) Only outstanding Federal SLS Loans, Federal Stafford Loans, Federal PLUS Loans, and Federal Consolidation Loans for which amounts were owed on September 11, 2001, or outstanding Federal Consolidation Loans incurred to pay off loan amounts that were owed on September 11, 2001, are eligible for discharge under this section.

(2)(i) Eligibility for a discharge under this section does not qualify a borrower for a refund of any payments made on the borrower's loan prior to the date the loan was discharged.

(ii) A borrower may apply for a partial discharge of a joint Consolidation loan due to death or total and permanent disability under the procedures in § 682.402(b) or (c). If the borrower is granted a partial discharge under the procedures in § 682.402(b) or (c) the borrower may qualify for a refund of payments in accordance with § 682.402(b)(5) or § 682.402(c)(1)(i).

(iii) A borrower may apply for a discharge of a PLUS loan due to the death

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of the student for whom the borrower received the PLUS loan under the procedures in § 682.402(b). If a borrower is granted a discharge under the procedures in § 682.402(b), the borrower may qualify for a refund of payments in accordance with § 682.402(b)(5).

(3) A determination by a lender or a guaranty agency that an eligible public servant or an eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 for purposes of this section does not qualify the eligible public servant or the eligible victim for a discharge based on a total and permanent disability under § 682.402.

(4) The spouse of an eligible public servant or eligible victim may not receive a discharge under this section if the eligible public servant or eligible victim has been identified as a participant or conspirator in the terrorist-related aircraft crashes on September 11, 2001. An eligible parent may not receive a discharge on a FFEL PLUS Loan or on a Consolidation Loan that was used to repay a FFEL or Direct Loan PLUS Loan incurred on behalf of an individual who has been identified as a participant or conspirator in the terrorist-related aircraft crashes on September 11, 2001.

[71 FR 78080, Dec. 28, 2006, as amended at 72 FR 55053, Sept. 28, 2007]

§ 682.408 Loan disbursement through an escrow agent.

(a) *General.* (1) A guaranty agency or an eligible lender may act as an escrow agent for the purpose of receiving Stafford and PLUS loan proceeds disbursed by an eligible lender other than a school, State lender, or a State agency or instrumentality, and transmitting those proceeds to the borrower's school if the lender and the escrow agent have entered into a written agreement for this purpose.

(2) The agreement must provide that—

(i) The lender may make payments into an escrow account that is administered by the escrow agent in accordance with the requirements of paragraph (c) of this section and § 682.207(b)(1)(iv);

(ii) The lender shall promptly notify the borrower's school when funds are escrowed for the borrower; and

(iii) The escrow agent is authorized to—

(A) Transmit the proceeds according to the note evidencing the loan;

(B) Commingle the proceeds of the loans paid to it pursuant to an escrow agreement;

(C) Invest the loan proceeds only in obligations of the Federal Government or obligations that are insured or guaranteed by the Federal Government; and

(D) Retain for its own use interest or other earnings on those investments.

(b) *Disbursement by the lender.* Subject to § 682.207(b)(1)(iii), the lender may disburse the loan proceeds to the escrow agent using any method agreed to by the escrow agent and the lender.

(c) *Transmittal of FFEL loan proceeds by an escrow agent.* The escrow agent shall transmit Stafford and PLUS loan proceeds received from a lender under this section to a school in accordance with the requirements of § 682.207(b)(1)(ii) and (iv), or Stafford Loan proceeds to a borrower in accordance with the requirements of § 682.207(b)(1)(i) and (ii), not later than 10 days after the agent receives the funds from the lender.

(d) *Return of untransmitted proceeds.* The escrow agent shall return any untransmitted proceeds of a loan to the lender within 15 working days after receiving information indicating that the student has not enrolled, or has ceased to be enrolled on at least a half-time basis, for the period of enrollment for which the loan was intended.

(Authority: 20 U.S.C. 1078, 1082)

[57 FR 60323, Dec. 18, 1992, as amended at 64 FR 18980, Apr. 16, 1999; 71 FR 45708, Aug. 9, 2006; 71 FR 64399, Nov. 1, 2006]

§ 682.409 Mandatory assignment by guaranty agencies of defaulted loans to the Secretary.

(a)(1) If the Secretary determines that action is necessary to protect the Federal fiscal interest, the Secretary directs a guaranty agency to promptly assign to the Secretary any loans held by the agency on which the agency has received payment under § 682.402(f), 682.402(k), or 682.404. The collection of